IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8452 OF 2003

Shri Nathu Tukaram Dhake ..Petitioner.

Versus

Shri Shankar Sadashiv Bhandare & Ors. ..Respondents.

Ms. Namita Hemrajan for the Petitioner.

Ms. Gauri Ghodse for the Respondent No.2.

Mr. R.S.Apte for the Respondent No.3.

CORAM : S. A. BOBDE, J.

DATED : 16TH AUGUST, 2005.

P.C.:

1. Rule, returnable forthwith.

Learned counsel for the respondents waives service of rule for the respondents.

Heard by consent.

2. The petitioner claims to be a tenant of the building known as "Vrindavan Building" Sahakar Colony, situate at Naupada, Thane. The petitioner filed a suit being R.C. Suit No. 166/2003, for the following

reliefs :-

"(a) It be held and declare that the defendants No. 1 and 2 have absolute(sic) no right whatsoever to demolish suit building in such manner which will case(sic) prejudice the plaintiff in use occupation and enjoyment of suit premises as there is convenient for quiet enjoyment.

(b) The defendant No. 1 & 2 their agent and servant be permanently restrained by order of permanent injunction from demolishing the suit building or in any part thereof in such manner or act in such manner which will cause prejudice to plaintiff in use, occupation and enjoyment of suit premises as there is convenient for quite enjoyment.

(c) It be held and declare that plaintiff has no right to use, occupy possess and enjoy with all its benefits the suit premises quietly and peacefully without any obstruction and disturbance at the hands of defendant No.1& 2.

(d) It be held and declare that defendant No.1 and

2 their agent servants and as per them have absolute(sic) no right whatsoever to dispossess the plaintiff from suit premises otherwise in due course of law and other than in due course of law.

(e) The defendant No. 1 & 2 their agent servants then be permanently restrained by of permanent injunction from disposing the plaintiff from suit premises other wise in due cause of law and without following due process of law.

(f) The defendant No.3 may be directed by order of mandatory injunction to revoke and cancel the plans and specification if any sanctioned by them for development of suit site after demolition of suit building.

(g) Pending the hearing and final disposal of this suit premises the defendant No.1 and 2 their agent, servant and any person claiming through them be temporarily restrained by order of temporary injunction from demolishing the suit building or any part thereof in such manner or act of such manner which will cause prejudice

to the plaintiff in use, occupation and enjoyment of suit premises in these is convenient for quite enjoyment.

(h) Pending the hearing and final disposal of this suit the temporary injunction from dispossessing the plaintiff from suit premises other wise in due course of law and without following due process of law.

(i) Ad-interim injunction in terms of prayer (f) and (g) may be granted.

(j) Such further and other reliefs as the nature and circumstances of the case may require, deem fit to this Hon’ble Court to grant be granted.

(k) Cost of this suit be awarded to plaintiff."

3. Admittedly, the demolition was to be carried out because of the notice of the Municipal Corporation. There is no dispute before me now that the building has already been demolished and in fact

new building has also been constructed. Ms. Gauri Godse, the learned counsel for respondent No.2 states that the respondent No.2 has kept a flat vacant for occupation by the petitioner on the ground floor.

4. The petitioner has challenged the orders of the courts below, refusing to grant temporary injunction to the petitioner, restraining the respondents from demolishing the building, which has been found to be in dilapidated condition. The matter has become infructuous since the building is already demolished. I see no reason to interfere with the impugned order. The learned counsel for the petitioner submits that the petitioner is entitled to a larger area and also damages. On going through the prayers, there is no such prayer in the present suit.

5. Admittedly, the mediation suggested by this court has failed and the learned mediator has filed the failure report.

6. In the circumstances, the petition is liable to be dismissed and the same is hereby dismissed.

DT.16.08.05 (S.A.BOBDE,J)

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